

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 02-0605**  
**Sales/Use Tax**  
**For the Years 1995-2001**

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**ISSUE**

**I. Sales and Use Tax-Exemption Certificates**

**Authority:** Ind. Code § 6-2.5-3-7, Ind. Code § 6-2.5-8-1; Ind. Code § 6-2.5-8-8.

Taxpayer protests the assessment of sales and use tax with respect to sales made to several customers Taxpayer believed were not subject to sales and use tax.

**STATEMENT OF FACTS**

Taxpayer is an individual engaged in the business of stone carving. Taxpayer does two primary activities in his business. First, Taxpayer takes stones provided by other persons and engraves those stones to customer specifications. Second, Taxpayer engages in carving items which are then sold to third parties.

For the years in question, Taxpayer neither registered as a retail merchant under Indiana law nor collected sales tax. Taxpayer was assessed sales tax with respect to his various sales. Taxpayer protested the assessment with respect to several sales. A hearing was held, and this letter of findings results.

**I. Sales and Use Tax-Exemption Certificates**

**DISCUSSION**

Taxpayer argues that the sales of materials to various purchasers were exempt. In particular, Taxpayer maintains that the purchases in question were made for the customer's subsequent resale, either for their business or for further sale. Further, Taxpayer argues that the purchases were transported outside Indiana, and are thus exempt on that basis.

Taxpayer has argued that the out-of-state customers/resellers should not bear the burden of filing for retail merchant certificate for Indiana, particularly given that the customers/resellers only sold their property outside Indiana.

Under Ind. Code § 6-2.5-3-7(a):

A person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana, unless the person or the retail merchant can produce evidence to rebut that presumption.

Under Ind. Code § 6-2.5-3-7(b) (emphasis added):

A retail merchant is not required to produce evidence of nontaxability under subsection (a) if the retail merchant receives from the person who acquired the property an exemption certificate which certifies, *in the form prescribed by the Department*, that the acquisition was exempt from use tax.

The basic purpose of a proper exemption certificate vis-à-vis a seller of personal property is to relieve that seller of the burden of proving that the purchaser used the items sold for an exempt use and associated record keeping for every retail purchase that may be exempt. Ind. Code § 6-2.5-3-7; Ind. Code § 6-2.5-8-8. Instead, the Department must then look to the purchaser to determine their liability for use tax.

However, when a seller does not receive a valid Indiana exemption certificate for whatever reason, then the seller and purchaser jointly bear the onus of showing that the property sold to the purchaser was used by the purchaser in a manner that was exempt from tax. Ind. Code § 6-2.5-3-7(a). Upon Departmental audit of a seller in a case such as this, the seller then bears the burden of showing by alternative means that the exemption claimed by the purchaser is proper. The question then shifts to alternative means of showing such exemptions.

Here, Taxpayer has presented exemption certificates from another state, or exemption certificates dated after the dates of the sales in question. Under the Indiana statute, this does not constitute a form prescribed by the Department. Even though the purchasers were located outside Indiana, an exemption certificate is required in order to make exempt purchases in Indiana. Ind. Code § 6-2.5-8-1, -8. However, the purchaser is not subject to the application fee due under Ind. Code § 6-2.5-8-1(b). The net effect is to assign an identification number to the merchant, and to permit the merchant to make tax-exempt purchases from the Indiana seller.

In cases in which a seller does not receive an exemption certificate, the means of a taxpayer to show that the sale was exempt from tax is to follow the flow of transactions and establish exemption based on that flow. Here, Taxpayer has not met that burden, and is accordingly denied.

### **FINDING**

Taxpayer's protest is denied.